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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 4

[Docket No. TTB-2011-0008; Notice No. 122]

RIN: 1513-AB84

Proposed Revision to Vintage Date Requirements

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to amend its wine labeling regulations to allow a vintage date to appear on a wine that is labeled with a country as an appellation of origin. The proposal would provide greater grape sourcing and wine labeling flexibility to winemakers, both domestic and foreign, while still ensuring that consumers are provided with adequate information as to the identity and quality of the wines they purchase.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may send comments on this notice to one of the following addresses:

- <http://www.regulations.gov> (via the online comment form for this notice as posted within Docket No. TTB–2011–0008 at “Regulations.gov,” the Federal e-rulemaking portal);

- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or

- Hand Delivery/Courier in Lieu of Mail: Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200E, Washington, DC 20005.

See the **Public Participation** section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice and any comments TTB receives about this proposal at <http://www.regulations.gov> within Docket No. TTB–2011–0008.

A direct link to this docket is also available on the TTB Web site at <http://www.ttb.gov/wine/wine-rulemaking.shtml> under Notice No. 122. You may also view copies of this notice and any comments received about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20005. Please call 202–453–2270 to make an appointment.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Rulings Division, P.O. Box 18152, Roanoke, VA, 24014; telephone 202–453–1039.

SUPPLEMENTARY INFORMATION:

Background on Wine Labeling

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act and the regulations promulgated under it.

Current Vintage Date Requirements

Part 4 of the TTB regulations (27 CFR part 4) sets forth the standards promulgated under the FAA Act for the labeling and advertising of wine. Section 4.27 of the TTB regulations (27 CFR 4.27) sets forth rules regarding the use of a vintage date on wine labels. Section 4.27(a) provides that vintage wine is wine labeled with the year of harvest of the grapes and that the wine “must be labeled with an appellation of origin other than a country (which does not qualify for vintage labeling).” Rules regarding appellation of origin labeling are contained in § 4.25 of the TTB regulations (27 CFR 4.25).

In addition, § 4.27(a)(1) provides that for American or imported wines labeled with a viticultural area appellation of origin (or its foreign equivalent), at least 95 percent of the wine must have been derived from grapes harvested in

the labeled calendar year. For American or imported wines labeled with an appellation of origin other than a country or viticultural area (or its foreign equivalent), § 4.27(a)(2) provides that at least 85 percent of the wine must have been derived from grapes harvested in the labeled calendar year.

The requirement that vintage wine must be labeled with an appellation of origin other than a country derives from T.D. ATF–53, published in the **Federal Register** (43 FR 37672) by TTB’s predecessor agency, the Bureau of Alcohol, Tobacco and Firearms (ATF), on August 23, 1978. Prior to that time the applicable regulations required that grapes used to make vintage wine must have been grown in the same “viticultural area,” a term then undefined by the regulations.

In amended Notice No. 304, a notice of proposed rulemaking preceding T.D. ATF–53 and published in the **Federal Register** (42 FR 30517) on June 15, 1977, ATF noted that the wine industry advocated that the then current requirement that 95 percent of the grapes used to make vintage wine be grown in the labeled appellation area be reduced to 75 percent. This mirrored the requirement that to bear an appellation of origin, at least 75 percent of the grapes used to make a wine must be grown in the appellation area indicated on the label. The industry position, according to ATF, was that “vintage means only that the grapes were grown in the specified year, and that the place in which the grapes were grown is unimportant.” ATF stated in that notice that it did not agree, commenting as follows:

A good year in one part of California, for example, does not necessarily mean a good year in another part, any more than a good year in Burgundy means a good year in Bordeaux. For a vintage to be meaningful to consumers, they must have assurance that the grapes were grown in the place stated on the label. We believe that a 95 percent requirement provides greater assurance than a 75 percent requirement.

However, in T.D. ATF-53, the agency modified its position somewhat stating that it concurred with the industry position that a vintage date should refer only to the year of harvest. Accordingly, a new regulatory provision regarding appellations of origin, also adopted in T.D. ATF-53, required that the percentage of grapes required to come from the labeled appellation area depended upon whether the appellation was a viticultural area (85 percent), a State, county or foreign equivalent (75 percent), or a multicounty or multistate appellation (100 percent), but in each case without reference to vintage date usage. The rulemaking record for T.D. ATF-53 does not explain why ATF decided that vintage wine must be labeled with an appellation other than a country, but it does indicate that the agency believed that a vintage date should provide consumers information about harvest conditions.

European Commission Petition

The European Commission submitted a petition to TTB to amend § 4.27(a) to allow the use of a country appellation for vintage labeling. The petitioner states that the current regulation prohibiting a country appellation presents a significant difficulty for its member countries.

The petitioner notes that some of its member countries are much smaller in size than certain U.S. States, counties, and even certain American viticultural

areas (AVAs). To illustrate this, it compares the areas of Malta (246 sq. km), Luxembourg (2,586 sq. km), and Austria (83,871 sq. km) with the Lodi AVA (2,230 sq. km) and the Ohio River Valley AVA (67,000 sq. km). The petitioner argues that there is no convincing rationale for a rule that allows vintage dating for a wine with an appellation of “California” (423,970 sq. km), but not for a wine labeled with the appellation “Portugal” (92,391 sq. km).

The petitioner also contrasts the vintage date rule in question with the general varietal (grape type) labeling rule contained in 27 CFR 4.23(a), under which the names of one or more grape varieties may be used as the type designation of a grape wine only if the wine is also labeled with an appellation of origin as defined in § 4.25. Because § 4.25 includes countries within the definition of an appellation of origin, a wine labeled with a varietal designation may be labeled with a country appellation. The petitioner contends that these regulatory rules are inconsistent and that it would seem more logical to apply a coherent approach and allow vintage labeling for wines labeled with a country appellation.

Finally, the petitioner asserts that the language in Article 7(1) of the 2006 agreement on trade in wine between the United States and the European Community (EC) supports the proposed change. (See <http://www.ttb.gov/agreements/eu-wine-agreement.pdf>.) TTB notes that Article 7 concerns names of origin, which include the country names of the Member States of the European Union. However, because the use of vintage dates is not specifically addressed

in that provision, TTB does not consider this assertion to be particularly supportive of the proposed change.

TTB Analysis

TTB believes that the petitioner has generally presented persuasive arguments for consideration of the proposed change and that there are three reasons why the proposed change would be consistent with the FAA Act mandate to ensure that consumers have adequate information about the quality and identity of the product.

First, TTB believes that its most recent rulemaking action regarding vintage date requirements supports a reconsideration of this issue since the current proposal, like the earlier action, would liberalize the vintage date requirements in § 4.27. See T.D. TTB-45, published in the **Federal Register** (71 FR 25748) on May 2, 2006. In that earlier rulemaking, TTB liberalized the vintage date requirements by reducing the percentage of wine derived from grapes required to be harvested in the labeled calendar year from 95 percent to 85 percent for wine labeled with an appellation of origin other than a country or a viticultural area (or its foreign equivalent). The percentage remained at 95 for wines bearing a viticultural area (or its foreign equivalent) as an appellation of origin. Blending wine from different vintages could result in a more consistent product and provide a better value for consumers, according to the proponents of the earlier liberalization of vintage date labeling.

Similarly, under the current proposal, winemakers, domestic or foreign, would have the flexibility to use grapes from a wider area to produce more

consistent wines for consumers while still providing the year date of harvest information to the consumer.

Second, as noted in the public comment discussion in the preamble of T.D. TTB-45, not all consumers use vintage dates as an indication of harvest conditions. That discussion quoted two commenters as stating that many consumers, particularly those who purchase moderately priced wines, use the vintage date to ensure that they are not purchasing a wine that is too old or too young for their preferences. The consumer makes this particular use of the vintage date regardless of whether the appellation of origin is a country or a smaller region within a country.

Finally, TTB believes that the use of a country appellation of origin on vintage wine would not detract from the statutory mandate to provide consumers with adequate information as to the identity and quality of the wines they purchase. Even though the use of a country appellation for a large country such as the United States or Australia might not be a useful indication of harvest conditions, it would not necessarily be misleading to consumers: purchasers of a wine labeled "United States" likely understand that harvest conditions are not uniform for the entire United States. On the other hand, vintage dates for smaller appellations, such as Napa Valley or Bordeaux, will still provide useful information to consumers who do make purchases based on harvest conditions attributable to a particular vintage.

Based on the above, TTB believes the petitioner's proposal merits consideration and public comment. Accordingly, this document sets forth

proposed amendments to § 4.27 to allow vintage labeling for wines labeled with a country as an appellation of origin. In addition, the proposed amendments to § 4.27 require a conforming amendment in § 4.34(b)(5) to remove the reference to the requirement that an appellation of origin for vintage wine shall be other than a country.

Public Participation

Comments Sought

TTB requests comments from interested members of the public. TTB is particularly interested in how effectively the proposed changes will serve the mandate under the FAA Act of providing consumers with adequate information about the identity and quality of wines and preventing consumer confusion. Please provide specific information in support of your comments.

Submitting Comments

You may submit comments on this notice by using one of the following three methods:

- Federal e-Rulemaking Portal: You may send comments via the online comment form linked to this notice within Docket No. TTB–2011–0008 on “Regulations.gov,” the Federal e-rulemaking portal, at <http://www.regulations.gov>. A link to the docket is available under Notice No. 122 on the TTB Web site at <http://www.ttb.gov/wine/wine-rulemaking.shtml>.

Supplemental files may be attached to comments submitted via Regulations.gov. For information on how to use Regulations.gov, click on the site’s Help or FAQ tabs.

- U.S. Mail: You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.
- Hand Delivery/Courier: You may hand-carry your comments or have them hand-carried to the Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW., Suite 200E, Washington, DC 20005.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 122 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. TTB will not acknowledge receipt of comments, and will consider all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please include the entity's name in the "Organization" blank of the comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or that is inappropriate for public disclosure.

Public Disclosure

On the Federal e-rulemaking portal, Regulations.gov, TTB will post, and the public may view, copies of this notice, selected supporting materials, and any electronic or mailed comments received about this proposal. A direct link to the Regulations.gov docket containing this notice and the posted comments received on it is available on the TTB Web site at <http://www.ttb.gov/wine/wine-rulemaking.shtml> under Notice No. 122. You may also reach the docket containing this notice and the posted comments received on it through the Regulations.gov search page at <http://www.regulations.gov>. All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. TTB may omit voluminous attachments or material that it considers unsuitable for posting.

You and other members of the public may view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments received about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20005. You may also obtain copies for 20 cents per 8.5- x 11-inch page. Contact TTB's information specialist at the above address or by telephone at 202-453-2270 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

TTB certifies under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this proposed rule will not have a significant economic

impact on a substantial number of small entities. The proposed amendments merely provide optional, additional flexibility in wine labeling decisions.

Accordingly, a regulatory flexibility analysis is not required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

Jennifer Berry of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this document.

List of Subjects in 27 CFR Part 4

Administrative practice and procedure, Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

Proposed Amendments to the Regulations

For the reasons discussed in the preamble, TTB proposes to amend 27 CFR, chapter I, part 4 as set forth below:

PART 4—LABELING AND ADVERTISING OF WINE

1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

2. Section 4.27 is amended:

a. In the second sentence of the introductory text of paragraph (a), by removing the words “other than a country (which does not qualify for vintage labeling)”; and

b. In paragraph (a)(2), by removing the words “country or”.

3. Section 4.34(b)(5) is amended by removing the last sentence.

Signed: September 10, 2010.

John J. Manfreda,

Administrator.

Approved: October 8, 2011.

Timothy E. Skud,

Deputy Assistant Secretary
(Tax, Trade, and Tariff Policy).